

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

UNITED STATES OF AMERICA . CRIMINAL ACTION NO.  
 . 4:08-CR-165-A  
V. .  
 . Fort Worth, Texas  
RANDALL HOWARD WOLFORD . April 24, 2009  
 . . . . .

TRANSCRIPT OF PROCEEDINGS  
(Sentencing Hearing)  
BEFORE THE HONORABLE JOHN MCBRYDE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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P R O C E E D I N G S

(Commencing, 9:35 a.m.)

THE COURT: I'll next call for sentencing Number 4:08-CR-165-A, United States of America versus Randall Welford.

Mr. Lewis is here for the government --

MR. LEWIS: Yes, sir.

THE COURT: -- and Mr. Burns and Ms. Bowers are here for the defendant.

State your full name for the record, Mr. Welford.

DEFENDANT WOLFORD: Randall Howard Welford.

THE COURT: Okay. You appeared before me on December 15, 2008, when you pleaded guilty to the offense charged by Count 1 of the indictment in this case.

MR. BURNS: Your Honor, he pleaded not guilty. We had a jury trial.

MR. LEWIS: That's correct.

THE COURT: I'm sorry. I misspoke.

You pleaded not guilty, and there was a jury trial. The jury returned a verdict of guilty.

MR. LEWIS: Correct, sir.

THE COURT: Let's see. Actually, was a verdict returned the same day --

MR. LEWIS: Yes, Your Honor.

THE COURT: -- that the trial started, December 15,

1 2008. Of course, we're here today for sentencing based on the  
2 conviction resulting from that jury verdict, the offense,  
3 enticement of a child.

4 Mr. Burns, did you and your client receive in a timely  
5 manner the presentence report and the addendum to it?

6 MR. BURNS: We did, Your Honor.

7 THE COURT: Okay. And you've seen the government's  
8 response to the objections you made on behalf of your client.  
9 You've seen the probation officer's response, and you've seen  
10 my order expressing my tentative conclusion that the  
11 objections are without merit, except to whatever extent they  
12 were accepted by the probation officer.

13 Does your client still want to pursue any of those  
14 objections?

15 MR. BURNS: Yes, Your Honor, 7 through 11 and Number  
16 15, Your Honor, if I may go through just some matters on each  
17 of those objections?

18 THE COURT: Okay. Let me locate the document in the  
19 file.

20 MR. BURNS: I have an extra copy.

21 THE COURT: I have it here.

22 Seven through 11 and 15 are the ones you continue to  
23 assert?

24 MR. BURNS: Yes, Your Honor.

25 THE COURT: Okay. Seven is an objection to Paragraph

1 44. That pertains to some images that were found on the  
2 defendant's laptop computer?

3 MR. BURNS: Yes, Your Honor. They were admitted --  
4 those and Number 7 were admitted into evidence over our  
5 objection, and I ask the Court to recall when the government's  
6 agent was on the stand testifying about those images that were  
7 found, he indicated that we couldn't tie them back to  
8 Mr. Wolford ever putting them on there or having even seen  
9 them.

10 THE COURT: But they were on his computer?

11 MR. BURNS: Yes, sir. No question they were on his  
12 computer. He had several computers, Your Honor.

13 THE COURT: Well, what is the precise basis of your  
14 objection?

15 MR. BURNS: Well, Your Honor, first of all, that  
16 there is no connection that he ever viewed or actually dealt  
17 with those images that were removed from that computer, and  
18 absent that evidence, Your Honor, the Court shouldn't take  
19 that into -- first of all, we didn't think you should have  
20 admitted it at the trial. We don't want to waive that  
21 objection, but in addition, Your Honor, we don't think the  
22 Court should consider it in assessing sentence on this  
23 conviction for solicitation of a child over the internet.

24 THE COURT: Wouldn't there be an inference that the  
25 Court could and should reach that the images on his computer

1 were ones that he had viewed, had something to do with?

2 MR. BURNS: I don't believe so, Your Honor, unless  
3 there is some -- I mean, some indication that the only person  
4 who ever had dealings with that computer was Mr. Wolford. If  
5 other persons could have gotten on there -- and, you know,  
6 there is always that possibility that other persons got on  
7 there, and other persons downloaded that. I would submit to  
8 the Court that even the Court doesn't know what's on --  
9 everything that's on the Court's computer and all the images  
10 and stuff sent over the internet when you're trying to do  
11 research and the little flash up things come, and for that  
12 reason, Your Honor, we don't think the Court should consider  
13 them in assessing his punishment in this case.

14 THE COURT: Remind me what the government's response  
15 to that has been?

16 MR. LEWIS: Not a problem, Judge.

17 As far as the government's response, it's that the  
18 forensic examiner, Kyle Gibson, testified that the images of  
19 child pornography did come from the defendant's computer.  
20 Now, the government does agree that Kyle Gibson was not able  
21 to testify that he saw the defendant download the images once  
22 he did them. However, with the other evidence that was found  
23 on the computer, the chat logs with the undercover agent, the  
24 undercover agent's picture of the 13-year-old girl found on  
25 the defendant's computer, as well as the additional image of

1 child pornography found on the defendant's computer, it's the  
2 government's contention that the child pornography found was  
3 on the defendant's computer just as the other evidence had  
4 shown through the testimony of the forensic agent, as well as  
5 the testimony of the officer who did the undercover operation.

6 THE COURT: Well, I'll overrule the objection, and I  
7 find by a preponderance of the evidence that the defendant was  
8 responsible for those images being on the computer and viewed  
9 them.

10 Let's see. Your objection Number 8, is it the same?

11 MR. BURNS: It's basically the same, except for  
12 they're talking about in there something from the National  
13 Center for Missing and Exploited Children, that three of the  
14 images were from three known victims in that agency's computer  
15 base. It's for more of a confrontation question, Your Honor,  
16 and our confrontation, I'll admit, on that one isn't all that  
17 strong --

18 THE COURT: Are you serious about that?

19 MR. BURNS: Sir?

20 THE COURT: Are you serious about that Number 8, or  
21 is that just thrown in --

22 MR. BURNS: That's what I'm saying. I mean, it's not  
23 my strongest point, Your Honor --

24 THE COURT: Well, I'm going to overrule that. I  
25 don't think Crawford versus Washington applies to use of

1 material like that, particularly in a sentencing hearing.

2 Okay. Number 9.

3 MR. BURNS: Nine relates to the alleged conduct. It  
4 was suppose to have been sexual misconduct in Louisiana. A  
5 lady has made that -- and I don't think the Court should  
6 consider that, Your Honor. Again, we allege a Crawford  
7 violation as well. But, also, Your Honor, the fact is you're  
8 having to find, you know, probability, if this is true and all  
9 the other stuff in order to consider it, and I submit to the  
10 Court the Court shouldn't do that.

11 When the Court -- and this goes to 9, 10 and 11,  
12 basically, our argument is, Your Honor, the government didn't  
13 have sufficient evidence to even get a probable cause arrest  
14 warrant, or they would have done it. And, therefore, there is  
15 not sufficient evidence, Your Honor, if tested properly for  
16 the Court to make the determination that those are good and  
17 sufficient grounds to consider as elements of the sentencing  
18 factors. And my explanation in objection Number 7, we  
19 acknowledge, Your Honor, that Crawford has not been determined  
20 to be applicable to a sentencing by a federal court by the  
21 Fifth Circuit. We believe that -- we want to take it to a  
22 higher power, Your Honor, and, specifically --

23 THE COURT: The point of these objections is to try  
24 to get the Supreme Court to hold that Crawford applies to  
25 sentencing?

1 MR. BURNS: Pretty much, yes, Your Honor.

2 THE COURT: Okay. Well, 9 and 10 are the same  
3 objections, basically, aren't they? One is going to Paragraph  
4 52 and the other is going to Paragraph 53?

5 MR. BURNS: Well, that and the fact -- the additional  
6 argument that, you know, if they didn't have enough to arrest  
7 him on it, the Court shouldn't consider it being enough  
8 evidence to --

9 THE COURT: Well, there's a difference between what  
10 it takes to prove somebody guilty in a criminal trial and what  
11 it takes to persuade a judge in a sentencing hearing that a  
12 fact exists, and I find by a preponderance of the evidence  
13 that the facts recited in Paragraphs 52 and 53 in the  
14 presentence report are accurate and that the defendant did the  
15 things that are described in those paragraphs and that those  
16 things can and should be taken into account at the  
17 sentencing -- at this sentencing hearing. So I'll overrule  
18 the objections to Numbers 9 and 10.

19 MR. BURNS: Might I clarify --

20 THE COURT: Pardon me. That's 8 and 9, Objections 8  
21 and 9. I think that's right -- no, it's 9 and 10.

22 MR. LEWIS: I believe it's 9 and 10, sir.

23 MR. BURNS: Nine and 10, Your Honor.

24 THE COURT: Okay. You said you also wanted to assert  
25 objection Number 11?



1           MR. BURNS: 15 -- I mean, 11, which is regarding the  
2 investigation about something and somebody is missing, and  
3 they are trying to implicate Mr. Welford in that  
4 disappearance, and there has been no showing of any complicity  
5 by Mr. Welford regarding that.

6           And, again, Your Honor, I make the same argument as  
7 before. They didn't have enough to arrest him. I mean, not  
8 just convict him. They didn't have the probable cause to  
9 arrest him, or they would have, I would submit. And the  
10 information contained within the presentence report I submit  
11 to the Court isn't enough to connect him to that offense in  
12 any way, form, or fashion, the same argument I made with the  
13 other two.

14           THE COURT: Well, I think it's as unmeritorious as to  
15 Paragraph 54 as it was to the other two. So I'm going to  
16 overrule that objection.

17           I find by a preponderance of the evidence the facts  
18 recited in Paragraph 54, as well as those recited in  
19 Paragraphs 52 and 53 in the presentence report, are accurate,  
20 and the defendant was responsible for the conduct described in  
21 those reports and responsible for the inclusion in the  
22 computer of the images described in Paragraph 54. I realize  
23 there is no direct evidence as to that part, but it,  
24 certainly, is a fact that can be inferred and the Court does  
25 infer from the existence of those images on his computer, and

1 that's supported by the fact that he appeared to be anxious to  
2 get rid of those images.

3 Let's see. Now, that goes to 11. You say you also want  
4 to assert 15?

5 MR. BURNS: No. I'm sorry, Your Honor -- yes. I'm  
6 sorry. Yes, 15 is also -- that's the death part.

7 Again, I don't think that there is any showing that he had  
8 any type of complicity in the person that ended up missing.  
9 As far as I know from the reports, they never even questioned  
10 him about it.

11 THE COURT: Let me say on that one. I think the  
12 probation officer was correct to putting that in there. It's  
13 just information, but I'm not going to take that into account  
14 in sentencing, because it's pure speculation, as I see it, as  
15 to whether or not he was involved in that.

16 What's your thought on that?

17 MR. LEWIS: Judge, in my response, I stated that the  
18 Court can take into account the defendant's conduct, given  
19 this paragraph, the appropriate way the Court deems  
20 appropriate. So the government has no objection --

21 THE COURT: Well, I think it's pure speculation that  
22 he was involved in it. Of course, the nature of his conduct  
23 generally would certainly -- raises a suspicion that he's  
24 capable of doing what that says.

25 MR. LEWIS: I agree with the Court on that.

1           THE COURT: I'm not going to consider the facts  
2           alleged -- or asserted -- or stated -- I'll put it finally  
3           right -- in Paragraph 65 of the presentence report to  
4           determine what sentence to impose.

5           MR. LEWIS: Yes, Your Honor.

6           THE COURT: So in that sense, I'm sustaining  
7           objection Number 15.

8           Is that it?

9           MR. BURNS: Yes, Your Honor.

10          THE COURT: Okay. There being no further objections  
11          to the presentence report, the Court adopts as the fact  
12          findings of the Court the facts set forth in the presentence  
13          report as modified or supplemented by the addendum and any  
14          facts I found from the bench. And the Court adopts as the  
15          conclusions of the Court the conclusions expressed in the  
16          presentence report as modified or supplemented by the  
17          addendum and any conclusions I've expressed from the bench.

18          The Court concludes that the total offense level is 30.  
19          That the criminal history category is I. That the  
20          imprisonment range is 120 (sic) to 121 (sic) months. That the  
21          supervised release range is five years -- is five years to  
22          life. And that the fine range is \$15,000 to \$150,000, and  
23          that a special assessment of \$100 is mandatory.

24          Okay. Now, as I have indicated in the order I signed on  
25          the 21st, I tentatively concluded that an upward departure

1 above the top of his guideline range would be appropriate for  
2 the reasons expressed in the presentence report, and my  
3 tentative conclusion is that it should be a very significant  
4 departure considering this defendant's conduct. I think he's  
5 a serious danger to society. So I'll hear from you on that.

6 Do you have any evidence you want to offer on that  
7 subject?

8 MR. BURNS: Nothing further, Your Honor, other than  
9 the objections. I can simply argue to the Court --

10 THE COURT: Okay. Well, you want to make your  
11 statement now? You can include in it whatever you want to say  
12 on that subject.

13 MR. BURNS: Yes, sir.

14 THE COURT: Go ahead and make your statement.

15 MR. BURNS: Thank you.

16 Your Honor, Mr. Wolford, as the record does show, both in  
17 the presentence report and in the trial, has been a person who  
18 has pulled himself up --

19 THE COURT: Hold on a minute.

20 (Brief pause in proceedings)

21 THE COURT: Go ahead. I'm sorry to interrupt you.

22 MR. BURNS: He's basically pulled himself up by his  
23 own bootstraps in the oil and gas field and has become a  
24 person of great note and abilities, Your Honor. He's one of  
25 the few people in the world who can run the supervision of

1 those wells to prevent blow-outs to keep the oil and gas  
2 industry going.

3 I submit to the Court that Mr. Wolford is a person at  
4 the age -- still 55 -- at the age of 55, even a ten year  
5 sentence recommended by the guidelines is a substantial  
6 sentence, Your Honor, that any upward variance really would  
7 not be justified. It would be looking at things and punishing  
8 him for things he hasn't been convicted of or even, really,  
9 charged with, and I submit to the Court that that would be an  
10 improper reason to depart upward.

11 If you look at the case and look at the guideline  
12 recommendations, the sentencing commission did put forth the  
13 reasons for punishing someone, and the guidelines have gone up  
14 steadily over the last five to six years in this internet  
15 solicitation-type case. But the Court should consider  
16 Wolford's lack of criminal record, his work history, his  
17 supporting his family, Your Honor. And I would ask the Court  
18 to consider sentencing, if not within the guideline range, at  
19 least something close to that guideline range, based upon his  
20 age, his lack of criminal history, and the fact that the  
21 guideline sentencing commission felt that this particular type  
22 of case, that a 10-year, 11-year type sentence would be an  
23 appropriate sentence and would ask the Court to consider those  
24 factors.

25 THE COURT: Okay. Mr. Wolford, you have the right to

1 make any statement or presentation you would like to make on  
2 the subject of mitigation, that is, the things you think the  
3 Court should take into account in determining what sentence to  
4 impose or on the subject of sentencing more generally, and at  
5 this time I'll invite you to do that. Bear in mind in making  
6 your statement, if you choose to make one, the Court  
7 tentatively concluded that there should be a sentence somewhat  
8 above the top of the advisory guideline range in this case.  
9 So I would invite you at this time to make that statement if  
10 you would like to make one.

11 DEFENDANT WOLFORD: Your Honor, I have nothing to say  
12 truthfully.

13 THE COURT: Well, I've considered all of the factors  
14 the Court should consider under 18, United States Code,  
15 Section 3553(a). I conclude that a sentence of imprisonment  
16 of 292 months would be a reasonable sentence when combined  
17 with a term of supervision for life and a special assessment  
18 of \$100. So that's the sentence I'm going to impose.

19 I considered the recommended or the advisory guideline  
20 range as well as the statutory concerns in Section 3553(a) and  
21 have determined that an upward departure pursuant to USSG,  
22 Sections 5K2.21 and 4A1.3A1, would be appropriate. There are  
23 several aggravating factors listed in the presentence report  
24 and some mentioned in Paragraphs 106 and 107 of the  
25 presentence report.

1           The guideline -- advisory guideline range simply doesn't  
2           reflect the actual seriousness of the offense in this case  
3           based on the conduct underlying a potential charge not pursued  
4           and that didn't all but enter into the determination of the  
5           advisory guidelines, the applicable advisory guideline range.  
6           And those -- that other offense conduct is appropriate for  
7           Court to consider under USSG, 5K1.21.

8           In Paragraphs 38 through 47 of the presentence report,  
9           there's information about criminal activity that was not  
10          considered in the guideline calculations. Had that uncharged  
11          conduct been included in the computations, it would have  
12          produced a total offense level of 40 and a guideline range of  
13          imprisonment of 292 to 365 months. So the sentence I've  
14          decided to impose really is -- may be viewed to be a low  
15          sentence when you consider the defendant's actual conduct.

16          And I've also taken into consideration the information  
17          about the defendant's criminal history set forth in Paragraphs  
18          52 and 53 of the presentence report. And I believe it's  
19          Paragraph 56 of the presentence report that discusses the  
20          earlier activity of the defendant and the enticement of a  
21          child that did not result in a criminal conviction. And I  
22          don't think there is any question that he's admitted that he's  
23          guilty of that offense, and it's virtually identical to the  
24          conduct involved in this case.

25          So I've considered all of the factors that the Court

1 should consider in determining that the sentence I've  
2 indicated I'm going to impose is an appropriate sentence that  
3 will address the need for the sentence to promote respect for  
4 the law, to afford adequate deterrence to criminal conduct,  
5 and to protect the public from further crimes of the  
6 defendant.

7 The Court, therefore, is ordering and adjudging that the  
8 defendant be committed to the custody of the Bureau of Prisons  
9 to serve a term of imprisonment of 292 months. I do not order  
10 him to pay a fine because I don't have any indication that he  
11 has the resources to do that or will any time soon.

12 I am ordering that he serve a term of supervised release  
13 of life. Of course, that begins when he gets out of prison.

14 While he's on supervised release, he shall comply with the  
15 the standard conditions that will be set forth in the judgment  
16 of conviction and sentence and the following additional  
17 conditions:

18 He shall not commit another federal, state, or local  
19 crime.

20 He shall not possess illegal controlled substances.

21 He shall cooperate in the collection of DNA as directed by  
22 the probation officer and as authorized by the Justice for All  
23 Act of 2004.

24 He shall participate in sex offender treatment services as  
25 directed by the probation officer until successfully



1 discharged, and those services may include  
2 psycho-physiological testing to monitor his compliance,  
3 treatment progress, and risk to the community. And he shall  
4 contribute as a condition of his supervised release to the  
5 cost of those services at the rate of at least \$25 a month.

6 He shall have no contact with minors under the age of 18,  
7 including correspondence, telephone, internet, electronic  
8 communication, or communication through third parties.

9 I'm going to correct that to say he will have no contact  
10 with anyone under the age of 18 whether they're considered to  
11 be minors or not.

12 He shall not have access to or loiter near school grounds,  
13 parks, arcades, playgrounds, amusement parks, or other places,  
14 where children may frequently congregate, except as may be  
15 allowed upon advance approval by the probation officer.

16 He shall neither possess nor have under his control any  
17 pornographic matter or any matter that sexually depicts  
18 persons under the age of 18, including, but not limited to,  
19 matter obtained through access to any computer and any matter  
20 linked to computer access or use.

21 He shall have no contact with any of the victims of his  
22 criminal conduct, including by correspondence, telephone, or  
23 communication through third parties, except under the  
24 circumstances approved in advance by the probation officer and  
25 shall not enter onto the premises, travel past, or loiter near

1 such victims' residences, place of employment, or other places  
2 frequented by the victims.

3 He shall register as a sex offender with state and local  
4 law enforcement as directed by the probation officer in each  
5 jurisdiction where he resides, is employed, or is a student.  
6 He shall provide all information required in accordance with  
7 state registration guidelines with initial registration being  
8 completed within three business days after release from  
9 confinement.

10 He shall provide written verification of registration to  
11 the probation officer within three business days following  
12 registration and renew registration as required by the  
13 probation officer. He shall, no later than three business  
14 days after each change of name, residence, employment, or  
15 student status, appear in person in at least one jurisdiction  
16 and inform that jurisdiction of all changes in the information  
17 required in the sex offender registry.

18 He shall participate and comply with the requirements of  
19 the computer internet monitoring program contributing to the  
20 cost of the monitoring in an amount not to exceed \$40 per  
21 month. He shall consent to the probation officer's conducting  
22 ongoing monitoring of his computers. The monitoring may  
23 include the installation of hardware or software systems that  
24 allow evaluation of computer use. He shall not remove, tamper  
25 with, reverse engineer, or circumvent the software in any way.

1 He shall only use authorized computer systems that are  
2 compatible with the software or hardware used by the computer  
3 and internet monitoring program. He shall permit the  
4 probation officer to conduct a preliminary computer search  
5 prior to the installation of software. The monitoring  
6 software may be disabled or removed at any time during the  
7 term of supervision at the discretion of the probation  
8 officer.

9 He shall submit to periodic unannounced examination of his  
10 computers, storage media, and other electronic or  
11 internet-capable devices performed by the probation officer at  
12 a reasonable time and in a reasonable manner based on  
13 reasonable suspicion of contraband evidence of a violation of  
14 supervision. This may include the retrieval and copying of  
15 any prohibited data or the removal of such systems for the  
16 purpose of conducting a more thorough inspection. He shall  
17 provide written authorization for release of information from  
18 the defendant's internet service provider.

19 He shall not use any computer other than the one the  
20 defendant is authorized by the probation officer to use  
21 without prior approval from the probation officer.

22 He shall not use any hardware program or device designed  
23 to hide, alter, or delete records and/or logs of the  
24 defendant's computer use, internet activities, or files stored  
25 in his computer.

1           He shall not use any computer or computer-related  
2           equipment owned by his employer except for the strict benefit  
3           of his employer in the performance of his job-related  
4           duties.

5           He shall provide the probation officer with accurate  
6           information about his entire computer system, and his e-mail  
7           shall only be accessed through a pre-approved application.

8           He shall not install new hardware, perform upgrades, or  
9           effect repairs on his computer system without receiving prior  
10          permission from the probation officer.

11          He shall not maintain or create a user account on any  
12          social networking site, such as MySpace.com, Facebook.com,  
13          Adultfriendfinder.com, et cetera, that allows access to  
14          persons under the age of 18 or allows for the exchange of  
15          sexually explicit material, chat conversations, or instant  
16          messaging. He shall not view or access any web profile of  
17          users under the age of 18.

18          He shall not use or possess any gaming consoles,  
19          including, but not limited to, Xbox, PlayStation, Nintendo, or  
20          devices without prior permission from the probation officer.

21          He shall not use or possess a web cam or other software  
22          that allows for the exchange of video or photographs online.

23          He shall not access any service or use any software that  
24          allows direct peer-to-peer contact that may include chat  
25          rooms, file sharing, or other similar activity, without

1 permission of the probation officer.

2 He shall not use or own any device that includes internet  
3 access other than authorized by the U.S. Probation Officer,  
4 and that may include, but is not limited to, to PDAs,  
5 electronic games, and cellular digital telephones.

6 He shall not engage in or utilize any service that allows  
7 peer-to-peer file sharing or file transfer protocol activity.

8 He shall not possess or use removable media configured  
9 with bootable operating systems.

10 He shall not access any internet service provider account  
11 or other online service using someone else's account, name,  
12 designation, or an alias.

13 Those are the conditions of the supervised release.

14 The Court further orders that the defendant pay a special  
15 assessment of \$100. That's payable immediately to the United  
16 States through the office of the United States Clerk.

17 Mr. Wolford, you have the right to appeal the sentence I  
18 have imposed if you're dissatisfied with it. That appeal  
19 would be to the United States Court of Appeals for the Fifth  
20 Circuit --

21 MR. BURNS: Could we interpose -- the Fifth Circuit  
22 requires us to interpose an objection --

23 THE COURT: Will you let me finish -- let me finish  
24 what I'm saying?

25 MR. BURNS: Okay. I'm sorry.

1           THE COURT: You have the right to appeal in forma  
2 pauperis. That means without any cost to you if you qualify  
3 for it. You have the right to have the clerk of the Court  
4 file a notice of appeal for you, and the clerk will do that  
5 forthwith if you specifically request it.

6           Your attorneys have been given a form that outlines  
7 certain rights and obligations in reference to an appeal. If  
8 you haven't already done so, I want the three of you to review  
9 it and -- your attorneys to review it with you, and once you  
10 and your attorneys are both satisfied you understand  
11 everything in the form, I want all three of you to sign it and  
12 return it to the court coordinator.

13           Has that been done?

14           MR. BURNS: It has, Your Honor, but I've signed --  
15 I'm the only lawyer that signed it.

16           THE COURT: Well, that's okay. You're the lead  
17 attorney, aren't you?

18           MR. BURNS: Yes.

19           May I tender this to the Court?

20           THE COURT: Yes.

21           Okay. Now, you wanted to say something?

22           MR. BURNS: Yes.

23           Your Honor, pursuant to Fifth Circuit rulings, we object  
24 to the upward departure as being excessive and the sentence  
25 being excessive and unreasonable, and I can't remember which

1 term they actually require, but unreasonable and excessive and  
2 to maintain our purposes -- our issue on appeal so we don't  
3 get hit with plain error.

4 THE COURT: The defendant is remanded to custody, and  
5 the attorneys are excused.

6 MR. BURNS: Thank you.

7 MS. BOWERS: Thank you.

8 (End of proceedings, 10:10 a.m.)  
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20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from  
22 the record of proceedings in the above-entitled matter, and  
23 that the transcript was prepared by me and under my  
supervision.

24 s/ Ana P. Warren  
Ana P. Warren, CSR #2302  
U.S. District Court Reporter

September 16, 2009  
Date

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